

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

August 10, 2006

In the Matter of
Lorissa Dijak

Docket No. 2002-094
File No. W027969
Stoughton

RECOMMENDED FINAL DECISION

This matter began with the submission of a copy of MassDEP's instructions for filing a Notice of Claim for an adjudicatory hearing in May 2002, the appeals filing fee, and a copy of the Department's approval of a variance under Title 5 (310 CMR 15.000) granted by the Town of Stoughton. The submission was unsigned. The variance approval, dated May 22, 2002, was issued to Lorissa Dijak for a proposed subsurface disposal system at 115 Connell Drive in Stoughton.

Upon receipt, the matter was treated as a request for an adjudicatory hearing, and assigned a MassDEP appeals docket number.¹ No other filings were made until an Order to Show Cause and File a More Definite Statement was issued on June 22, 2006. Given the length of time that had passed since the claim was filed, and the lack of any subsequent activity, the

¹ A copy of the Department's variance decision was copied to Norfolk Engineering. After the Order was issued, the firm contacted the case administrator in this office by phone to indicate that the firm had represented the applicant/petitioner, Ms. Dijak, and was not the applicant for the variance. The service list for the Order mistakenly identified the engineering firm as the applicant. The service list and caption for this matter (formerly in the Matter of Norfolk Engineering) has been changed to accurately identify the applicant as Lorissa Dijak.

Order required the petitioner to file some indication of whether the matter is now moot, and if not, a more definite statement of the factual grounds for her appeal and the relief sought. The Order required a response from the petitioner by July 10, 2006.

On July 5, 2006, the U.S. Postal Service returned the Order addressed to the applicant/petitioner at her Stoughton address as undeliverable. The Order was then reissued on July 6, 2006 to her at 118 Cleveland Court, Schaumburg, Illinois – an alternate address taken from the initial claim.

To date no response to the Order has been filed by the applicant/petitioner, or from Norfolk Engineering. The Order included notice that the appeal would be dismissed for lack of prosecution if no response to the Order was filed. Service of the Order requiring the applicant/petitioner's response was accomplished via the U.S. Postal Service to all known addresses for the applicant/petitioner, with no resulting response. I therefore recommend dismissal of this claim pursuant to 310 CMR 1.01(5)(a)15.f.vi., 310 CMR 1.01(6)(b) and 310 CMR 1.01(10) for failure to prosecute, making the Department's variance approval decision final.

NOTICE

This decision is a recommended final decision of the Presiding Officer. It has been transmitted to the Commissioner for his final decision in this matter. This decision is therefore not a final decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's final decision is subject to the rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended final decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Commissioner Robert W. Golledge, Jr., August 21, 2006.